

IN THE UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----	x	
	:	
In re	:	Chapter 11
	:	
DELPHI CORPORATION <u>et al.</u> ,	:	Case No. 05-44481 (rdd)
	:	
Debtors.	:	(Jointly Administered)
	:	
-----	x	

**AFFIDAVIT OF SERVICE**

I, Amber M. Cervený, being duly sworn according to law, deposes and says that I am employed by Kurtzman Carson Consultants, LLC, proposed claims and noticing agent for the Debtors in the above-captioned cases.

On October 18, 2005, I caused to be served, via overnight delivery the documents listed in Section 1 on the parties attached hereto as Exhibit A:

**Section 1**

- I. Motion of the Debtors for an Order Pursuant to 11 U.S.C. §§ 362, 503 and 546 and Fed. R. Bankr. P. 9019 Establishing Procedures for Treatment of Reclamation Claims (“Reclamation”) (**Docket No. 21**) [**Attached hereto as Exhibit B**]
- II. Order Pursuant to 11 U.S.C. §§ 362, 503 and 546 and Fed. R. Bankr. P. 9019 Establishing Procedures for Treatment of Reclamation Claims (**“Reclamation”**) (**Docket No. 230**) [**Attached hereto as Exhibit C**]

Dated: October 20, 2005

/s/ Amber M. Cervený  
Amber M. Cervený

Sworn to and subscribed before  
me on October 20, 2005

/s/ Evan J. Gershbein  
Notary Public

My Commission Expires: 1/19/07

# **EXHIBIT A**

Company	Contact	Address 1	Address 2	City	State	Zip
6801 Haggerty Road	Christopher R Nicastr	#4626E		Canton	MI	48187
AB Automotive Inc	Steve Weddle	2500 Business Highway 70 East	PO Box 2240	Smithfield	NC	27577
Abbott Nicholson PC	Daniel G Kielczewski	300 River Place	Suite 3000	Detroit	MI	48207-4225
Abbott Nicholson Quilter Esshaki & Youngblood PC	David G Kielczewski	300 River Place	Suite 3000	Detroit	MI	48207-4225
Acushnet Rubber Co Inc dba Precix	Lynne M Mastera	744 Belleville Avenue		New Bedford	MA	02745
Air Products and Chemicals Inc	Thomas L Jacob	7201 Hamilton Blvd		Allentown	PA	18195
Airgas Southwest Inc	Denise Knebel	4312 IH 35S		New Braunfels	TX	78130
Akebono Corporation	Dave Condon	34385 W Twelve Mile Road		Farmington Hills	MI	48331
American Electronic Components Inc	Ronald N Cerny	23590 County Road 6		Elkhart	IN	46514
American Molded Products LLC	Michael Aiuto	51490 Celeste Drive		Shelby Township	MI	48315
Anglin Flewelling Rasmussen Campbell & Trytten LLP	Mark T Flewelling	199 S Los Robles Avenue Suite 600		Pasadena	CA	91101
Archer & Greiner	Jerrold S Kulback	One Centennial Square		Haddonfield	NJ	08033-0968
Arnall Golden & Gregory LLP	Darryl S Laddin	171 17th Street NW		Atlanta	GA	30363
Arnall Golden Gregory LLP	Darryl S Lardin Heath J Vicente	171 17th Street NW	Suite 2100	Atlanta	GA	30363-1031
Autocam Corporation	Stuart F Cheney	4436 Broadmoor SE		Kentwood	WI	49512
Autoliv ASO Inc	Anthony J Nellis	1320 Pacific Drive		Auburn Hills	MI	48326
BEI Technologies Inc	William J Bush	2700 Systron Drive		Concord	CA	94518-1399
Best Best & Krieger LLP	Queenie K Ng	3750 University Avenue	PO Box 1028	Riverside	CA	92502-1450
Bialson Bergen & Schwab	Patrick M Costello	2600 El Camino Real	Suite 300	Palo Alto	CA	94306
Bialson Bergen & Schwab	Patrick M Costello	2600 El Camino Real	Suite 300	Palo Alto	CA	94306
Block Markus & Williams LLC	Thomas H Keyse	1700 Lincoln Street	Suite 4000	Denver	CO	80203
Bose McKinney & Evans LLP	Jeannette Eisan Hinshaw	135 N Pennsylvania Street	Suite 2700	Indianapolis	IN	46004
Bose McKinney & Evans LLP	Jeannette Eisan Hinshaw	2700 First Indiana Plaza	135 North Pennsylvania Ave	Indianapolis	IN	46204
Bose McKinney & Evans LLP	Jeannette Eisan Hinshaw	2700 First Indiana Plaza	135 North Pennsylvania Ave	Indianapolis	IN	46204
Bose McKinney & Evans LLP	Jeannette Eisan Hinshaw	2700 First Indiana Plaza	135 North Pennsylvania Ave	Indianapolis	IN	46204
Brouse McDowell	Alan M Koschik	1001 Lakeside Avenue	Suite 1600	Cleveland	OH	44114-1151
Buchanan Ingersoll PC	Magdeline D Coleman	1835 Market Street	14th Floor	Philadelphia	PA	19103-2985
Burr & Forman LLP	D Christopher Carson	420 North Twentieth Street	Suite 3100	Birmingham	AL	35203-5206
Burr & Forman LLP	D Christopher Carson	420 North Twentieth Street	Suite 3100	Birmingham	AL	35203-5206
Cable Technologies Inc	Martha O'Brien	3209 Avenue East		Arlington	TX	76011
Cascade Die Casting Group Inc	Patrick J Greene	7441 S Division	Suite 1A	Grand Rapids	MI	49548
Chamberlain D Amanda Oppenheimer & Greenfield LLP	Jerry R Greenfield	2 State Street	Suite 1600	Rochester	NY	14614
Chamberlain D Amanda Oppenheimer & Greenfield LLP	Jerry R Greenfield	2 State Street	Suite 1600	Rochester	NY	14614
Chapman & Cutler LLP	David S Barritt	111 W Monroe St		Chicago	IL	60603
Coats North America	Davis Helms	3430 Torington Way	Suite 301	Charlotte	NC	28277
Cohn Birnbaum & Shea PC	Scott D Rosen	100 Pearl Street	12th Floor	Hartford	CT	06103
Coilcraft Inc	Alan Mansho	1102 Silvert Lake Rd		Cary	IL	60013
Columbia Industrial Corp	Bryan Bueltel	2501 Thunderhawk Ct		Dayton	OH	45414
Conlin McKenney & Philbrick PC	Bruce N Elliott	350 South Main Street	Suite 400	Ann Arbor	MI	48104
Conlin McKenney & Philbrick PC	Bruce N Elliott	350 South Main Street	Suite 400	Ann Arbor	MI	48104-2131
Conlin McKenney & Philbrick PC	Bruce N Elliott	350 South Main Street	Suite 400	Ann Arbor	MI	48104-2131
Coolidge Wall Womsley & Lombard Co LPA	Ronald S Pretekin	33 West First Street	Suite 600	Dayton	OH	45402

Company	Contact	Address 1	Address 2	City	State	Zip
Coolridge Wall Womsley & Lombard Co LPA	Ronald S Pretekin	33 West First Street	Suite 600	Dayton	OH	45402-1289
Coolridge Wall Womsley & Lombard Co LPA	Steven M Wachstein	33 West First Street	Suite 600	Dayton	OH	45402-6705
Coolridge Wall Womsley & Lombard Co LPA	Steven M Wachstein	33 West First Street	Suite 600	Dayton	OH	454502-1289
Coolridge Wall Womsley & Lombard Co LPA	Steven M Wachstein	33 West First Street	Suite 600	Dayton	OH	45402
CTS Corporation	Henry Schmidt	1100 Roosevelt Road		Brownsville	TX	78521
CTS Corporation	Henry Schmidt	1100 Roosevelt Road		Brownsville	TX	78521
CTS Corporation	Henry Schmidt	1100 Roosevelt Road		Brownsville	TX	78521
CTS Corporation	Henry Schmidt	80 Thomas Street		Streetsville	ON	L5M 1Y9
Curtin & Heefner LLP	Robert Sz wajkos	250 Pennsylvania Avenue	Box 217	Morrisville	PA	19067
Curtis MalletPrevost Colt & Mosle LLP	Steven J Reisman Andrew M Thau	101 Park Avenue		New York	NY	10178-0061
Curtis MalletPrevost Colt & Mosle LLP	Steven J Reisman	101 Park Avenue		New York	NY	10178-0061
Curtis MalletPrevost Colt & Mosle LLP	Steven J Reisman	101 Park Avenue		New York	NY	10178-0061
DeHaan & Bach	Michael B Bach	11256 Cornell Park Drive	Suite 500	Cincinnati	OH	45242
Denso International America Inc	Carol Sowa	24777 Denso Drive		Southfield	MI	48086
Di Monte & Lizak LLC	Ira A Goldberg	216 West Higgins Road		Park Ridge	IL	60066-5736
Di Monte & Lizak LLC	Ira A Goldberg	216 West Higgins Road		Park Ridge	IL	60068-5736
Diconza Law PC	Gerard DiConza	630 Third Avenue		New York	NY	10017
Dilworth Paxson LLP	Stephen J Amoriello III	457 Haddonfield Road	Suite 700	Cherry Hill	NJ	08034
DLA Piper Rudnick Gray Cary US LLP	Jeffry A Davis	401 B Street	Suite 700	San Diego	CA	92101-4297
Dow Corning Corporation	Cindy Ferrio	2200 West Salzburg Road		Midland	MI	48686-0994
Dow Corning Corporation	Cindy Ferrio	2200 West Salzburg Road		Midland	MI	48686-0994
Dow Corning Corporation	Cindy Ferrio	2200 West Salzburg Road		Midland	MI	48686-0994
Engineered Plastic Components	Chad Johnson	53150 North main Street		Mattawan	MI	49071-9397
ER Wagner Manufacturing Co	Gary Torke	4611 North 32nd Street		Milwaukee	WI	53209-6023
Erman Teicher Miller Zucker & Freedman	David H Freedman	400 galleria Officentre	Suite 444	Southfield	MI	48034-2162
Fagel Haber	Lauren Newman	55 East Monroe Street	40th Floor	Chicago	IL	60603
Fagel Haber LLC	Lauren Newman	55 East Monroe Street	40th Floor	Chicago	IL	60603
Faison Office Products LLC	Jared D Casey Jr	3251 Revere St	#200	Aurora	CO	80011
Flexitech Inc	Randy Ross	1719 Hamilton Road		Bloomington	IL	61704
Foley & Lardner LLP	Laura J Eisele	500 Woodward Avenue	Suite 2700	Detroit	MI	48226-3489
Fortune Plastics Company of Illinois IncParade Packaging Inc	Chuck Novak	262 South Saddle Ave		Mundelein	IL	60060
Fox Rothschild LLP	Yann Geron Fred Stevens	13 East 37th Street	Suite 800	New York	NY	10016
Fox Rothschild LLP	Michael J Viscount Jr	1301 Atlantic Avenue	Suite 400	Atlantic City	NJ	08401-7212
FreudenbergNOK General Partnership	Dr Ralf Kreiger	47690 East Anchor Court		Plymouth	MI	48170
Freudenberg Nonwovens Limited Partnership	Jim Graham	2975 Pembroke Road		Hopkinsville	KY	42240
Frost Brown & Todd LLC	Kyle R Grubbs	2200 PNC Center	201 East Fifth Street	Cincinnati	OH	45202-4182
GenTek	James Imbriaco	90 East Halsey Road		Parsippany	NJ	07054
GenTek	James Imbriaco	90 East Halsey Road		Parsippany	NJ	07054
Gibbons Del Deo Dolan Griffinger & Vecchione	Mark B Conlon	One Riverfront Plaza		Newark	NJ	07102-5496
Goulston & Storrs PC	Peter D Bilowz	400 Atlantic Avenue		Boston	Maryland	02110-333

Company	Contact	Address 1	Address 2	City	State	Zip
Gowlings Lafleur Henderson LLP	John M Whyte	1 First Canadian Place	100 King Street West	Toronto	Canada	M5X 1G5
GraberRogg Inc	Arthur Zampella	22 Jackson Drive		Cranford	NJ	7016
Haynsworth Sinkler Boyd PA	Stanley H McGuffin	1201 Main Street 22nd FL	P O Box 11880	Columbia	SC	29211-1889
Haynsworth Sinkler Boyd PA	Stanley H McGuffin	1201 Main Street 22nd FL	PO Box 11889	Columbia	SC	28211-1889
Heraeus Metal Processing Inc	Uli Blankensteini	13429 Alondra Blvd		Sante Fe	CA	90670
Hertzberg PC	John D Hertzberg	30150 Telegraph Road	Suite 444	Bingham Farms	MI	48025
Hewlett Packard Company	Ken Higman	2125 E Katella Ave Suite 400		Anaheim	CA	92806
Hodgson Russ LLP	Stephen H Gross	152 West 57th Street	35th Floor	New York	NY	10019
Hodgson Russ LLP	Cheryl R Storie	One M&T Plaza	Suite 2000	Buffalo	NY	14203
Hodgson Russ LLP	Stephen L Yonty	One M&T Plaza	Suite 2000	Buffalo	NY	14203-2391
Hodgson Russ LLP	Stephen L Yonty	One M&T Plaza	Suite 2000	Buffalo	NY	14203-2391
Hogan & Hartson LLP	Audrey Moog Edward C Dolan	555 Thirteenth Street NW		Washington	DC	20004-1109
Honigman Miller Schwartz and Cohn LLP	Robert B Weiss Frank L Gorman	2290 First National Building	660 Woodward Avenue	Detroit	MI	48226-3583
Horizon Solutions Corporation	Michael C Hermann	2005 Brighton Henrietta	Town Line Road	Rochester	NY	14692-0203
Hunton & Williams LLP	Steven T Holmes	1601 Bryan Street	30th Floor	Dallas	TX	75201-3402
Ice Miller	Henry A Efroymsen	One American Square	Box 82001	Indianapolis	IN	46282
Ice Miller	Henry A Efroymsen	One American Square	Box 82001	Indianapolis	IN	46282-0002
ICG Castings Inc	Michael Cannon	101 Poplar St	PO Box 470	Dowagiac	MI	49047
Illinois Tool Works Inc	Gregory J Mancuso	3600 West Lake Avenue		Glenview	IL	60025-5811
Impro Industries Inc	Ann Conder	21660 East Copley Drive	Suite 225	Diamond Bar	CA	91765
Integrated Cable Systems Inc						
ISI of Indiana Inc	Guy Driggers	1212 East Michigan Street		Indianapolis	IN	46202
Jacob & Weingarten PC	Howard S Sher	777 Somerset Place	2301 Big Beaver Road	Troy	MI	48084
Jacob & Weingarten PC	Howard S Sher	777 Somerset Place	2301 Big Beaver Road	Troy	MI	48084
Jaffe Rait Heuer & Weiss	Richard Kruger	27777 Franklin Road	Suite 2500	Southfield	MI	48034-8421
Jaffe Rait Heuer & Weiss	Richard Kruger	27777 Franklin Road	Suite 2500	Southfield	MI	48034-8214
Jenner & Block LLP	Andrew S Nicoll	One IBM Plaza		Chicago	IL	60611
KenMac Metals	Stephen J Burns	17901 Englewood Drive		Cleveland	OH	44130
Key Safety Systems	Nadia Vettrano	7000 19 Mile Road		Sterling Heights	MI	48314
Keystone Industries Ltd	Aaron Howard	3031 Fryden Road		Moraine	OH	45439
Kirkland & Ellis LLP	Geoffrey A Richards	200 East Randolph Road		Chicago	IL	60601
Kirkpatrick & Lockhart Nicholson Graham LLP	Robert N Michaelson	599 Lexington Avenue		New York	NY	10022
Kirkpatrick & Lockhart Nicholson Graham LLP	Robert N Michaelson	599 Lexington Avenue		New York	NY	10022
Kirkpatrick & Lockhart Nicholson Graham LLP	Robert N Michaelson	599 Lexington Avenue		New York	NY	10022
Kohrman Jackson & Krantz	Mary K Whitmer	1375 East Ninth Street	20th Floor	Cleveland	OH	44114-1793
Kohrman Jackson & Krantz	Mary K Whitmer	1375 East Ninth Street	20th Floor	Cleveland	OH	44114-1793
Krugliak Wilkins Griffith & Dougherty Co LPA	Sam O Simmerman	4775 Munson Street NW	PO Box 36963	Canton	OH	44735-6963
KTube Corporation	Terry McCune	13400 Kirkham Way		Poway	CA	92064
LEM USA Inc		6643 W Mill Road		Milwaukee	WI	53218
Levenfeld Pearlstein LLC	James G Martignon	2 North LaSalle Street	Suite 1300	Chicago	IL	60602
Lewis and Roca LLP	Rob Charles	One South Church Street	Suite 700	Tucson	AZ	85701
Linebarger Goggan Blair & Sampson LLP	Diane W Sanders	1949 South IH 35	PO Box 17428	Austin	TX	78760

Company	Contact	Address 1	Address 2	City	State	Zip
Locke Reynolds LLP	Jeffrey M Boldt	201 North Illinois Street	PO Box 44961	Indianapolis	IN	46244-0961
Lord Bissel & Brook	Timothy W Brink	115 South LaSalle Street		Chicago	IL	60603
Lord Bissel & Brook	Timothy S McFadden	115 South LaSalle Street		Chicago	IL	60603
Lord Bissel & Brook LLP	Timothy S McFadden	115 South LaSalle Street		Chicago	IL	60603
Lord Bissel & Brook LLP	Timothy S McFadden	115 South LaSalle Street		Chicago	IL	60603
Magnesium Products of America Inc	Dan Hunan	2001 Industrial Drive		Eaton Rapids	MI	48827
Marian Inc	AE Leighton	1101 East St Clair Street		Indianapolis	IN	46202
Masuda Funai Eifert & Mitchell Ltd	Gary D Santella	203 North LaSalle Street	Suite 2500	Chicago	IL	60601
Masuda Funai Eifert & Mitchell Ltd	Gary Vist	203 North LaSalle Street	Suite 2500	Chicago	IL	60601-1262
Masuda Funai Eifert & Mitchell Ltd	Gary D Santella	203 North LaSalle Street	Suite 2500	Chicago	IL	60601-1262
Masuda Funai Eifert & Mitchell Ltd	Gary D Santella	203 North LaSalle Street	Suite 2500	Chicago	IL	60601-1262
Masuda Funai Eifert & Mitchell Ltd	Gary Vist	203 North LaSalle Street	Suite 2500	Chicago	IL	60601
Masuda Funai Eifert & Mitchell Ltd	Rein F Krammer	203 North LaSalle Street	Suite 2500	Chicago	IL	60601
Masuda Funai Eifert & Mitchell Ltd	Laurence P Becker	203 North LaSalle Street	Suite 2500	Chicago	IL	60601-1262
Masuda Funai Eifert & Mitchell Ltd	Laurence P Becker	203 North LaSalle Street	Suite 2500	Chicago	IL	60601-1262
Masuda Funai Eifert & Mitchell Ltd	Gary D Santella	203 North LaSalle Street	Suite 2500	Chicago	IL	60601-1262
Masuda Funai Eifert & Mitchell Ltd	Gary Vist	203 North LaSalle Street	Suite 2500	Chicago	IL	60601
McCarter & English LLP	David J Adler Brian F Moore	245 Park Avenue	27th Floor	New York	NY	10167
McDermott Will & Emery	James M Sullivan	50 Rockefeller Plaza		New York	NY	10020-1605
McDonald Hopkins Co LPA	Scott N Opincar	600 Superior Avenue E	Suite 2100	Cleveland	OH	44114
McDonald Hopkins Co LPA	Scott N Opincar	600 Superior Avenue E	Suite 2100	Cleveland	OH	44114
McDonald Hopkins Co LPA	Scott N Opincar	600 Superior Avenue E	Suite 2100	Cleveland	OH	44114
McDonald Hopkins Co LPA	Jean R Robertson	600 Superior Avenue E	Suite 2100	Cleveland	OH	44114
McNaughtonMcKay Electric Company	Michael G Mimnaugh	2255 CityGate Drive		Columbus	OH	43219
Miller Canfield Paddock & Stone PLC	Donald J Hutchinson	150 West Jefferson	Suite 2500	Detroit	MI	48226
Miller Canfield Paddock & Stone PLC	Donald J Hutchinson	150 West Jefferson	Suite 2500	Detroit	MI	48226
Miller Canfield Paddock and Stone PLC	Joseph D Gustavus	840 West Long Lake Road	Suite 200	Troy	MI	48098
Moore & Van Allen	Lou M Agosto	100 North Tryon Street	Suite 4700	Charlotte	NC	28202-4003
Motorola Inc	Robert J Patton	21440 West Lake Cook Road		Deer Park	IL	60010
Murray & Murray	Lovee D Sarenas	19400 Stevens Creek Boulevard	Suite 200	Cupertino	CA	95014-2548
National Grid	William C Grossman	114 Kensington Avenue		Buffalo	NY	14214
NSK Steering Systems America Inc	Donald J Hutchinson	150 West Jefferson	Suite 2500	Detroit	MI	48226
NU Horizons Electronics Corporation	Cipriano J Salazar	2070 Ringwood Avenue		San Jose	CA	95131
Osram Sylvania Inc	William Donaldson					
Panasonic Automotive Systems of Company of America	Vince Sarrecchia	776 Highway 74 South		Peachtree City	GA	30269
Parker Poe	Kiah T Ford	401 South Tryon Street	Suite 3000	Charlotte	NC	28202-1935
Pierce Atwood	Keith J Cunningham	One Monument Square		Portland	ME	04101
Plastic Moldings Company LLC	Dale Turner	2181 Grand Avenue		Cincinnati	OH	45214-1593
Porzio Bromberg & Newman PC	John S Mairo	100 Southgate Parkway	PO Box 1997	Morristown	NJ	07962-1997
Poyner & Sprull LLP	Judy D Thompson	301 South College Street	Suite 2300	Charlotte	NC	28202
Preti Flaherty Beliveau Pachios & Haley PLLP	Jessica P Fanjoy	57 North Main Street	PO Box 1318	Concord	NH	03302-1318
QAD Inc	Jason Pickering	10000 Midatlantic Drive		Mt Laurel	NJ	08054
Reicker Pfau Pyle & McRoy LLP	Gordon Imazu	1421 State Street	Suite B	Santa Barbara	CA	93102
Republic Engineered Products Inc	Joseph Lapinsky	3770 Embassy Parkway		Akron	OH	44333
Robinson Bradshaw & Hinson PA	David M Schilli	101 North Tryon Street	Suite 1900	Charlotte	NC	28246
Robinson Bradshaw & Hinson PA	David M Schilli	101 North Tryon Street	Suite 1900	Charlotte	NC	28246

Company	Contact	Address 1	Address 2	City	State	Zip
Robinson Bradshaw & Hinson PA	David M Schilli	101 North Tryon Street	Suite 1900	Charlotte	NC	28246
Robinson Bradshaw & Hinson PA	Brad Turner	101 North Tryon Street	Suite 1900	Fullerton	CA	92835
Russel Reynolds Associates Inc	Charles E Boulbol PC	26 Broadway	17th Floor	New York	NY	10004
Sachnoff & Weaver Ltd	Steven T Bobo	10 South Wacker Drive		Chicago	IL	60606
Sanluis Rassini International Inc et al	Thomas R Ajamie	711 Louisiana	Suite 2150	Houston	TX	77022
Sarnatech BNL USA Inc	Terry R Holmes	56 Leonard Street	Unit 5	Foxboro	MA	2035
Seyfarth Shaw LLP	Robert W Dremluck	1270 Avenue of the Americas	Suite 2500	New York	NY	10020-1801
Seyfarth Shaw LLP	Paul M Baisier	1545 Peachtree Street NE	Suite 700	Atlanta	GA	30309-2401
Sheehan Phinney Bass & Green PA	Steven E Boyce James S LaMontagne	1000 Elm Street	PO Box 3701	Manchester	NH	03105-3701
Sheppard Mullin Richter & Hampton LLP	Richard W Brunette	333 South Hope Street	48th Floor	Los Angeles	CA	90071-1448
Shipman & Goodwin LLP	Jennifer L Adamy	One Constitution Plaza		Hartford	CT	06103-1919
SKF USA Inc	Rex Thrasner					
Smith Gambrell & Russel	Barbara EllisMonro	1230 Peachtree Street NE	Suite 3100 Promenade II	Atlanta	GA	30309-3592
Special Devices Inc	James E Reeder	14370 White Sage Road		Moorestown	CA	93021
Spring Engineering & Manufacturing	Brian K Sherwood	7820 N Lilley Rd		Canton	MI	48187
SPX Corporation	Earl R Lietzau	8001 Angling Road	Suite 2C	Prortage	IN	49024
Stevens & Lee PC	Chester B Salomon Constantine D Pourakis	485 Madison Avenue	20th Floor	New York	NY	10022
Stevens & Lee PC	Chester B Salomon	485 Madison Avenue	20th Floor	New York	NY	10022
Stites & Harbison PLLC	W Robinson Beard	400 West Market Street	Suite 1800	Louisville	KY	40202-3352
Stites & Harbison PLLC	W Robinson Beard	400 West Market Street	Suite 1800	Louisville	KY	40202
Stoel Rives LLP	Richard C Josephson	900 SW Fifth Avenue	Suite 2600	Portland	OR	97204
Strasburger & Price LLP	Mark E Golman	901 Main Street	Suite 4300	Dallas	TX	75202-3794
Strasburger & Price LLP	Mark E Golman	901 Main Street	Suite 4300	Dallas	TX	75202-3794
Strobl Cunningham & Sharp	Gary H Cunningham	300 East Long Lake Road	#200	Bloomfield Hills	MI	48304
Taft Stettinius & Hollister LLP	William J Stavole	3500 BP Tower	200 Public Square	Cleveland	OH	44114-2302
Taft Stettinius & Hollister LLP	Richard L Ferrell	425 Walnut Street	Suite 1800	Cincinnati	OH	45202-3957
TDK Corporation of America	John P Sieger	525 W Monroe Street		Chicago	IL	60661-3693
Teleflex Incorporated	James K Leyden	155 South Limerick Road		Limerick	PA	19468
Teleflex Incorporated	James J Leyden	155 South Limerick Road		Limerick	PA	19468
Tenneco Automotive	Steve Linn					
The American Team Inc	David Van Houzen	42050 Executive Drive		Harrison Township	MI	48045
The Dayton Supply & Tool Company	Dwight S Woessner	507 E First Street	PO Box 727	Dayton	OH	45401-0727
The Jobin Law Firm PC	Christine J Jobin	1900 Grant Street	Suite 815	Denver	CO	80203
The Jobin Law Firm PC	Christine J Jobin	1900 Grant Street		Denver	CO	80203
Thyssenkrupp Stahl Company	Guy Todd	111 E Pacific		Kingsville	MO	64061
Thyssenkrupp Waupaca Inc	Gary Prell	311 Tower Road		Waupaca	WI	54981
Todd & Levi LLP	Jill Levi	444 Madison Avenue	Suite 1202	New York	NY	10022
Togut Segal & Segal LLP	Albert Togut	One Penn Plaza	Suite 3335	New York	NY	10119
Tokico USA Inc	Paul A Carroll	17225 Federal Drive	Suite 100	Allen Park	MI	48101
Torys LLP	Jason R Adams	237 Park Avenue		New York	NY	10017-3142
Tram Inc	Michael Vohl	47200 Port St		Plymouth	MI	48170
Trelleborg Prodyn Boots	Crystal Cordts	510 Long Meadow Drive		Salisbury	NC	28147
Trelleborg Sealing Solutions	Cindy Thompson	2531 Bremer Road		Fort Wayne	IN	46803
Tuggle Duggins & Meschan PA	Sarah F Sparrow	228 West Market Street		Greensboro	NC	27402
Turtle & Hughes Inc	Wendy SullivanYafchak	1900 Lower Road		Linden	NJ	07036
Tyco Plastics & Adhesives	H Gregory Barksdale	104 Carnegie Center Drive	Suite 301	Princeton	NJ	08540

Company	Contact	Address 1	Address 2	City	State	Zip
United Plastics Group Inc	Richard R Harris	1420 Kensington Road	Suite 209	Oak Brook	IL	60523
Universal Metal Hose Co	Donald R Heye	2133 South Kedzie Avenue		Chicago	IL	60623-3393
Vibracoustic de Mexico SA de CV	Pierre Abboud	Boulevard Aeropuerto Miguel Aleman No 164	Zona Industrial		Mexico	
Vibracoustic GmbH & Co KG	Reinhard Schultz	Hohnerweg 24		D69465	Weinhein	Germany
Votechnics Inc	Sam Ellis	200 Enterprise Drive		Scarborough	ME	04074
Voyrs Sater Seymour and Pease LLP	Robert J Sidman	PO Box 1008		Columbus	OH	43216-1008
Wainwright Industries Inc	Susan Cutler	17 Cermak Boulevard		St Peters	MI	63376
Waller Lansden Dortch & David PLLC	David E Lemke Robert J Welhoelter	511 Union Street	Suite 2700	Nashville	TN	37219
Warner Norcross & Judd LLP	Michael O'Neal	900 Fifth Third Center	111 Lyon Street NW	Grand Rapids	MI	49503
Weil Gotshal & Manges LLP	Martin J Bienenstock Michael P Kessler Jeffrey L Tanenbaum	767 Fifth Avenue		New York	NY	10153
Welwyn Components Limited	B Alderton	Welwyn Electronics Park Bedington		Northlumberland	NE22 7AA	UK
Winegarden Lindholme & Robertson PLC	Dennis M Haley	G9460 S Saginaw Street	Suite A	Grand Blanc	MI	48439
Winegarden Lindholme & Robertson PLC	Dennis M Haley	G9460 S Saginaw Street	Suite A	Grand Blanc	MI	48439
Wire Products Company Inc	Dale Zeleznik	14601 Industrial Parkway		Cleveland	OH	44135



## **EXHIBIT B**

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP  
333 West Wacker Drive, Suite 2100  
Chicago, Illinois 60606  
(312) 407-0700  
John Wm. Butler, Jr.  
John K. Lyons  
Ron E. Meisler

- and -

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP  
Four Times Square  
New York, New York 10036  
(212) 735-3000  
Kayalyn A. Marafioti (KM 9632)  
Thomas J. Matz (TM 5986)

Attorneys for Delphi Corporation, et al.,  
Debtors and Debtors-in-Possession

Delphi Legal Information Hotline:  
Toll Free: (800) 718-5305  
International: (248) 813-2689

Delphi Legal Information Website:  
<http://www.delphidocket.com>

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----	x	
	:	
In re	:	Chapter 11
	:	
DELPHI CORPORATION, <u>et al.</u> ,	:	Case No. 05-____ (____)
	:	
Debtors.	:	(Jointly Administered)
	:	
-----	x	

MOTION FOR ORDER  
UNDER 11 U.S.C. §§ 362, 503, AND 546 AND  
FED. R. BANKR. P. 9019 ESTABLISHING PROCEDURES  
FOR TREATMENT OF RECLAMATION CLAIMS

("RECLAMATION MOTION")

Delphi Corporation ("Delphi") and certain of its subsidiaries and affiliates (the "Affiliate Debtors"),<sup>1</sup> debtors and debtors-in-possession in the above-captioned cases (collectively, the "Debtors"), hereby submit this motion (the "Motion") for an order under 11 U.S.C. §§ 362, 503, and 546 and Fed. R. Bankr. P. 9019 (a) providing administrative expense treatment for certain holders of valid reclamation claims and (b) establishing procedures for the resolution and payment of reclamation claims. In support of this Motion, the Debtors rely on the Affidavit Of Robert S. Miller, Jr. In Support Of Chapter 11 Petitions And First Day Orders, sworn to October 8, 2005. In further support of this Motion, the Debtors respectfully represent as follows:

#### Background

##### A. The Chapter 11 Filings

1. On October 8, 2005 (the "Petition Date"), each of the Debtors filed a voluntary petition in this Court for reorganization relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1330, as amended (the "Bankruptcy Code"). The Debtors continue to operate their businesses and manage their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Debtors have moved this Court for an order for joint administration of these chapter 11 cases.

---

<sup>1</sup> In addition to Delphi, the following entities are debtors in these related cases: ASEC Manufacturing General Partnership, ASEC Sales General Partnership, Aspire, Inc., Delco Electronics Overseas Corporation, Delphi Automotive Systems (Holding), Inc., Delphi Automotive Systems Global (Holding), Inc., Delphi Automotive Systems Human Resources LLC, Delphi Automotive Systems International, Inc., Delphi Automotive Systems Korea, Inc., Delphi Automotive Systems LLC, Delphi Automotive Systems Overseas Corporation, Delphi Automotive Systems Risk Management Corp., Delphi Automotive Systems Services LLC, Delphi Automotive Systems Tennessee, Inc., Delphi Automotive Systems Thailand, Inc., Delphi China LLC, Delphi Connection Systems, Delphi Diesel Systems Corp., Delphi Electronics (Holding) LLC, Delphi Foreign Sales Corporation, Delphi Integrated Service Solutions, Inc., Delphi International Holdings Corp., Delphi International Services, Inc., Delphi Liquidation Holding Company, Delphi LLC, Delphi Mechatronic Systems, Inc., Delphi Medical Systems Colorado Corporation, Delphi Medical Systems Corporation, Delphi Medical Systems Texas Corporation, Delphi NY Holdings Corporation, Delphi Services Holding Corporation, Delphi Technologies, Inc., DREAL, Inc., Environmental Catalysts, LLC, Exhaust Systems Corporation, Packard Hughes Interconnect Company, Specialty Electronics, Inc., and Specialty Electronics International Ltd.

2. No trustee, examiner, or creditors' committee has been appointed in the Debtors' cases.

3. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

4. The statutory predicates for the relief requested herein are sections 362, 503, and 546 of the Bankruptcy Code and Fed. R. Bankr. P. 9019.

B. Current Business Operations Of The Debtors

5. With more than 180,000 employees worldwide, global 2004 revenues of approximately \$28.6 billion and global assets as of August 31, 2005 of approximately \$17.1 billion,<sup>2</sup> Delphi ranks as the fifth largest public company business reorganization in terms of revenues, and the thirteenth largest public company business reorganization in terms of assets. Delphi's non-U.S. subsidiaries are not chapter 11 debtors, will continue their business operations without supervision from the Bankruptcy Court, and will not be subject to the chapter 11 requirements of the U.S. Bankruptcy Code.

6. Over the past century, the operations which are now owned by Delphi have become a leading global technology innovator with significant engineering resources and technical competencies in a variety of disciplines. Today, the Company is arguably the single largest global supplier of vehicle electronics, transportation components, integrated systems and modules, and other electronic technology. The Company's technologies and products are present in more than 75 million vehicles on the road worldwide. The Company supplies products to nearly every major global automotive original equipment manufacturer with 2004 sales to its

---

<sup>2</sup> The aggregated financial data used in this Motion generally consists of consolidated information from Delphi and its worldwide subsidiaries and affiliates.

former parent, General Motors Corporation, equaling approximately \$15.4 billion and sales to each of Ford Motor Company, DaimlerChrysler Corporation, Renault/Nissan Motor Company, Ltd., and Volkswagen Group exceeding \$850 million.

7. As part of its growth strategy, Delphi has established an expansive global presence with a network of manufacturing sites, technical centers, sales offices, and joint ventures located in every major region of the world. In the U.S., the Debtors employ approximately 50,600 people. Those employees work in approximately 44 manufacturing sites and 13 technical centers across the country, and in Delphi's worldwide headquarters and customer center located in Troy, Michigan. Approximately 34,750 of these individuals are hourly employees, 96% of whom are represented by approximately 49 different international and local unions. Outside the United States, the Company's foreign entities employ more than 134,000 people, supporting 120 manufacturing sites and 20 technical centers across nearly 40 countries worldwide.

8. Delphi was incorporated in Delaware in 1998 as a wholly-owned subsidiary of GM. Prior to January 1, 1999, GM conducted the Company's business through various divisions and subsidiaries. Effective January 1, 1999, the assets and liabilities of these divisions and subsidiaries were transferred to Delphi and its subsidiaries and affiliates in accordance with the terms of a Master Separation Agreement between Delphi and GM. In connection with these transactions, Delphi accelerated its evolution from a North American-based, captive automotive supplier to a global supplier of components, integrated systems, and modules for a wide range of customers and applications. Although GM is still the Company's single largest customer, today more than half of Delphi's revenue is generated from non-GM sources.

9. Due to the significant planning that goes into each vehicle model, Delphi's efforts to generate new business do not immediately affect its financial results, because supplier selection in the auto industry is generally finalized several years prior to the start of production of the vehicle. When awarding new business, which is the foundation for the Company's forward revenue base, customers are increasingly concerned with the financial stability of their supply base. The Debtors believe that they will maximize stakeholder value and the Company's future prospects if they stabilize their businesses and continue to diversify their customer base. The Debtors also believe that this must be accomplished in advance of the expiration of certain benefit guarantees between GM and certain of Delphi's unions representing most of its U.S. hourly employees which coincides with the expiration of the Company's U.S. collective bargaining agreements in the fall of 2007.

C. Events Leading to the Chapter 11 Filing

10. In the first two years following Delphi's separation from GM, the Company generated more than \$2 billion in net income. Every year thereafter, however, with the exception of 2002, the Company has suffered losses. In calendar year 2004, the Company reported a net operating loss of \$482 million on \$28.6 billion in net sales. Reflective of a downturn in the marketplace, Delphi's financial condition has deteriorated further in the first six months of 2005. The Company experienced net operating losses of \$608 million for the first six months of calendar year 2005 on six-month net sales of \$13.9 billion, which is approximately \$1 billion less in sales than during the same time period in calendar year 2004.<sup>3</sup>

11. The Debtors believe that three significant issues have largely contributed to the deterioration of the Company's financial performance: (a) increasingly unsustainable U.S.

---

<sup>3</sup> Reported net losses in calendar year 2004 were \$4.8 billion, reflecting a \$4.1 billion tax charge, primarily related to the recording of a valuation allowance on the U.S. deferred tax assets as of December 31, 2004.

legacy liabilities and operational restrictions driven by collectively bargained agreements, including restrictions preventing the Debtors from exiting non-strategic, non-profitable operations, all of which have the effect of creating largely fixed labor costs, (b) a competitive U.S. vehicle production environment for domestic OEMs resulting in the reduced number of motor vehicles that GM produces annually in the United States and related pricing pressures, and (c) increasing commodity prices.

12. In light of these factors, the Company determined that it would be imprudent and irresponsible to defer addressing and resolving its U.S. legacy liabilities, product portfolio, operational issues and forward looking revenue requirements. Having concluded that pre-filing discussions with its Unions and GM were not leading to the implementation of a plan sufficient to address the Debtors' issues on a timely basis, the Company determined to commence these chapter 11 cases for its U.S. businesses to complete the Debtors' transformation plan and preserve value.

13. Through the reorganization process, the Debtors intend to achieve competitiveness for Delphi's core U.S. operations by modifying or eliminating non-competitive legacy liabilities and burdensome restrictions under current labor agreements and realigning Delphi's global product portfolio and manufacturing footprint to preserve the Company's core businesses. This will require negotiation with key stakeholders over their respective contributions to the restructuring plan or, absent consensual participation, the utilization of the chapter 11 process to achieve the necessary cost savings and operational effectiveness envisioned in the Company's transformation plan. The Debtors believe that a substantial segment of Delphi's U.S. business operations must be divested, consolidated, or wound-down through the chapter 11 process.

14. Upon the conclusion of this process, the Debtors expect to emerge from chapter 11 as a stronger, more financially sound business with viable U.S. operations that are well-positioned to advance global enterprise objectives. In the meantime, Delphi will marshal all of its resources to continue to deliver value and high-quality products to its customers globally. Additionally, the Company will preserve and continue the strategic growth of its non-U.S. operations and maintain its prominence as the world's premier auto supplier.

Relief Requested

15. By this Motion, the Debtors seek entry of an order (i) providing administrative treatment for certain holders of valid reclamation claims and (ii) establishing procedures for the resolution and payment of valid reclamation claims against the Debtors.

16. Under section 546(c)(2) of the Bankruptcy Code, the court may deny reclamation to a seller of goods with a statutory or common law right of reclamation (a "Seller") if the court grants the Seller's claim (to the extent that the Seller proves the validity and amount of its alleged reclamation claim) an administrative expense priority pursuant to section 503(b) of the Bankruptcy Code. By this Motion, the Debtors thus request that this Court grant administrative treatment to the valid claim of any Seller (i) who timely demands in writing reclamation of Goods (as defined below) pursuant to section 546(c)(1) of the Bankruptcy Code and section 2-702 of the Uniform Commercial Code as enacted under applicable state law (the "UCC"), (ii) whose Goods the Debtors have accepted for delivery, (iii) who specifically identifies the Goods to be reclaimed and thus proves the validity and amount of its reclamation claim, and (iv) whose Goods the Debtors do not agree to make available for pick-up by the Seller.



17. Debtors request that the amount of the administrative claim and the method of payment be as ordered by this Court or as determined pursuant to the Court-authorized global reclamation procedures proposed herein.

18. Moreover, the Debtors request that this Court authorize the Debtors to make Goods available for pick-up by any reclaiming Seller (i) who timely demands in writing reclamation of Goods pursuant to section 546(c)(1) of the Bankruptcy Code and section 2-702 of the UCC, (ii) whose Goods the Debtors have accepted for delivery, and (iii) who properly identifies the Goods to be reclaimed, provided that the Debtors agree to a return of the Goods rather than granting to the Seller an administrative claim or other form of consideration as permitted under the Bankruptcy Code. Additionally, the Debtors request this Court to prohibit the reclamation claimants and others from seeking to reclaim, or interfering with the delivery of, the Goods outside of the parameters of the Reclamation Procedures (as defined below). Such relief will facilitate the uninterrupted operation of the Debtors' businesses.

19. The Debtors also seek entry of an order instituting uniform procedures under section 546 of the Bankruptcy Code and Bankruptcy Rule 9019 pursuant to which Sellers must submit reclamation claims, authorizing the Debtors to conduct settlement negotiations to reconcile and pay each such claim, and enjoining reclamation claimants from pursuing payment of reclamation claims by alternative means.

#### Basis For Relief

20. As a result of the commencement of these cases, the Debtors expect to receive numerous reclamation claims pursuant to section 546(c) of the Bankruptcy Code demanding that the Debtors return certain goods (collectively, the "Goods") purportedly delivered to the Debtors on or prior to the commencement of these cases (collectively, the "Reclamation Claims").

21. It is of paramount importance for the Debtors to maintain normal business operations and avoid costly and distracting litigation relating to Reclamation Claims. If the Debtors are unable to establish a global set of reclamation procedures to resolve the Reclamation Claims, they will be faced with the prospect of simultaneously defending multiple reclamation adversary proceedings at a time when the Debtors need to focus on critical aspects of the reorganization process.

22. The Debtors believe that many of the Reclamation Claims that they receive may be valid, in whole or in part, subject to certain defenses the Debtors may have to such demands. In addition, while the Debtors do not concede that any of the elements necessary to prove a right of reclamation will be shown by any of their vendors, the Debtors seek to adopt a uniform procedure for determining and settling all valid Reclamation Claims so that litigation regarding Reclamation Claims does not interfere with the Debtors' reorganization efforts.

Proposed Reclamation Procedures

23. By this Motion, the Debtors also seek an order (the "Reclamation Order") authorizing and approving the Debtors' adoption and implementation of the following procedures (the "Reclamation Procedures") for reconciling Reclamation Claims (as reconciled and agreed to by the Debtors and the holder of a Reclamation Claim and/or approved by this Court, each, an "Allowed Reclamation Claim"):

(a) Reclamation Demands:

(i) All Sellers seeking to reclaim Goods from the Debtors would be required to submit a written demand (a "Reclamation Demand"):

(1) before 10 days after receipt of such Goods by the Debtors; or

- (2) if such 10-day period expires after the Petition Date, before 20 days after receipt of such Goods by the Debtors.
  - (ii) Such a Reclamation Demand must identify with specificity the Goods for which reclamation is sought and the basis for the Reclamation Claim.
  - (iii) Any Seller who fails to timely submit a Reclamation Demand pursuant to section 546 of the Bankruptcy Code would be deemed to have waived its right to payment on any purported Reclamation Claim.
- (b) The Statement Of Reclamation
- (i) Within 90 days after the Petition Date or receipt of a timely Reclamation Demand, whichever is later, the Debtors would provide the Seller with a copy of the Reclamation Order and a statement of reclamation (the "Statement Of Reclamation" or the "Statement").
  - (ii) The Statement Of Reclamation would set forth the extent and basis, if any, upon which the Debtors believe the underlying Reclamation Claim is not legally valid (the "Reconciled Reclamation Claim"). In addition, the Statement would identify any defenses that the Debtors choose to reserve, notwithstanding any payment of the Reconciled Reclamation Claim (the "Reserved Defenses").
  - (iii) Sellers who are in agreement with the Reconciled Reclamation Claim as contained in the Statement Of Reclamation may indicate such assent on the Statement Of Reclamation and return the Statement to the Debtors' representative as set forth in such Statement, with copies to Skadden, Arps, Slate, Meagher & Flom LLP, 333 West Wacker Drive, Suite 2100, Chicago, Illinois 60606 (Att'n: John K. Lyons, Esq. and Allison Verderber Herriott, Esq.) within 60 days after the date of receipt of the Statement Of Reclamation (the "Reconciliation Deadline").
  - (iv) Sellers who are in disagreement with the Reconciled Reclamation Claim as contained in the

Statement Of Reclamation (the "Dissenting Sellers") must indicate such dissent on the Statement Of Reclamation and return the Statement by the Reconciliation Deadline as provided in subparagraph (iii) above. A Statement Of Reclamation returned under this subparagraph must be accompanied by:

- (1) a copy of the Reclamation Demand together with any evidence of the date such Reclamation Demand was sent and received;
  - (2) the identity of the Debtor that ordered the products and the identity of the Seller from whom the Goods were ordered;
  - (3) any evidence demonstrating when the Goods were shipped and received;
  - (4) copies of the respective Debtor's and Seller's purchase orders, invoices, and proofs of delivery, together with a description of the Goods shipped; and
  - (5) a statement identifying which information on the Debtors' Statement Of Reclamation is incorrect, specifying the correct information, and stating any legal basis for the objection.
- (v) The failure of a Dissenting Seller to materially comply with subparagraph (iv) above would constitute a waiver of such Dissenting Seller's right to object to the proposed treatment and allowed amount of such Reclamation Claim, unless the Court orders otherwise.
- (vi) Any Seller who fails to return the Statement Of Reclamation by the Reconciliation Deadline or who returns the Statement Of Reclamation by the Reconciliation Deadline but fails to indicate assent or dissent would be deemed to have assented to the Reconciled Reclamation Claim.
- (c) Fixing The Amount Of The Reclamation Claim:
- (i) Each Reclamation Claim of (i) all Sellers who return the Statement Of Reclamation by the

Reconciliation Deadline and indicate their assent to the Reconciled Reclamation Claim as contained in the Statement Of Reclamation, (ii) all Sellers who fail to return the Statement Of Reclamation by the Reconciliation Deadline, and (iii) all Sellers who return the Statement Of Reclamation by the Reconciliation Deadline but who fail to indicate either assent or dissent would be deemed an Allowed Reclamation Claim in the amount of the Reconciled Reclamation Claim.

(ii) The Debtors would be authorized to negotiate with all Dissenting Sellers and to adjust each such Seller's Reconciled Reclamation Claim either upward or downward to reach an agreement regarding the Dissenting Seller's Reclamation Claim. The Debtors would also be authorized to include any Reserved Defenses as part of any such agreement. In the event the Debtors and a Dissenting Seller are able to settle on the amount and treatment of the Dissenting Seller's Reclamation Claim, the Reclamation Claim would be deemed an Allowed Reclamation Claim in the settled amount.

(iii) In the event that no consensual resolution of the Dissenting Seller's Reclamation Demand is reached within 60 days of the Reconciliation Deadline (or such later date as the parties agree), the Debtors would file a motion for determination of the Dissenting Seller's Reclamation Claim and set such motion for hearing at the next regularly-scheduled omnibus hearing occurring more than 20 days after the filing of the motion for determination, unless another hearing date is agreed to by the parties or ordered by the Court (the "Determination Hearing"). The Dissenting Seller's Reclamation Claim, if any, will be deemed an Allowed Reclamation Claim as fixed by the Court at the Determination Hearing or as agreed to by the Debtors and the Dissenting Seller prior to a determination by the Court at the Determination Hearing.

(d) Treatment Of Allowed Reclamation Claims:

- (i) The Debtors may at any point in these Reclamation Procedures satisfy in full any Reclamation Claim or Allowed Reclamation Claim by making the Goods at issue available for pick-up by the Seller or Dissenting Seller.
- (ii) All Allowed Reclamation Claims for which the Debtors choose not to make the Goods available for pick-up would be paid in full as an administrative expense pursuant to a confirmed plan of reorganization, or earlier, in whole or in part, in the Debtors' sole discretion.

24. The Debtors request that they be permitted to reconcile and pay Allowed Reclamation Claims pursuant to the Reclamation Procedures without need for further order of this Court. In the event that an Allowed Reclamation Claim, in whole or in part, is paid earlier than the effective date of a confirmed plan of reorganization, all such payments would be subject to any Reserved Defenses. Reserved Defenses would be deemed waived by the Debtors on the earlier of such effective date or the date which is one year following the last payment of an Allowed Reclamation Claim. The Debtors request that such date could be extended by agreement of the parties or by this Court, upon request of the Debtors.

25. The Debtors further propose that satisfaction of an Allowed Reclamation Claim pursuant to the Reclamation Procedures would constitute a waiver, release, discharge, and satisfaction of any and all rights and claims that the holder of the Allowed Reclamation Claim has ever had, or hereafter could, will, or may have, against the Debtors arising from, or in connection with, the Goods constituting the basis for the Allowed Reclamation Claim, and of any other reclamation rights for the same Goods that the holder of the Allowed Reclamation Claim has asserted against the Debtors.

26. The Debtors respectfully request that by the payment and acceptance under the Reclamation Procedures set forth herein, the Debtors and the holder of the Allowed

Reclamation Claim be deemed to agree that the Debtors do not in any way waive any claims they may have against any vendor relating to preferential or fraudulent transfers, or other potential avoidance actions, claims, counterclaims, or offsets with respect to that vendor. Rather, the Debtors expressly reserve their rights to pursue such claims, and any and all other claims they may seek to advance against any vendor in the future, other than those arising specifically in connection with the Allowed Reclamation Claim. The Debtors specifically reserve the right to object on any grounds to any claim filed by a Seller.

27. Nothing contained herein shall be deemed an admission as to the solvency or insolvency of the Debtors as the Petition Date.

28. The Debtors propose that the holder of an Allowed Reclamation Claim, by accepting payment in accordance with the Reclamation Procedures, be deemed to warrant that it has not assigned any of its rights to its Reclamation Claim.

Exclusive Remedy

29. The Debtors respectfully request that this Court establish the Reclamation Procedures as the sole and exclusive method permitted with respect to the resolution and payment of Reclamation Claims asserted against the Debtors. The Debtors further request that (i) all Sellers be prohibited from seeking any other treatment for their Reclamation Claims than is permitted by the Reclamation Procedures and (ii) all parties be prohibited from commencing adversary proceedings against the Debtors in respect of Reclamation Claims.

Applicable Authority

30. Reclamation rights generally are governed by section 2-702(2) of the Uniform Commercial Code. Section 2-702(2) allows a seller of goods, upon discovering that the buyer has received the goods on credit while insolvent, to reclaim the goods upon a demand made within ten days after the buyer's receipt of the goods. If a written misrepresentation of the

buyer's solvency has been made to the seller within three months before the delivery of the goods, the ten-day limit does not apply.

31. Pursuant to Bankruptcy Code section 546(c), a seller of goods to a debtor, in the ordinary course of the seller's business, retains its statutory or common law right to reclaim such goods so long as it complies with the additional requirements of section 546(c). 11 U.S.C. § 546(c).

32. When read together, reclamation claims under section 546(c) of the Bankruptcy Code and section 2-702 of the UCC are subject to an array of defenses, including the following:

- (a) a seller has no right to reclaim goods delivered to a debtor which was solvent when the goods were delivered;
- (b) a seller has a right to reclaim only those goods delivered without the Seller's knowledge of the buyer's insolvency;
- (c) a seller has a right to reclaim only those goods for which it made a reclamation demand before 10 days after the buyer's receipt of the goods or, if such 10-day period expires after the commencement of the bankruptcy case, before 20 days after such receipt;
- (d) the reclamation demand must be in writing;
- (e) a seller has a right to reclaim only those goods that are specifically identifiable (i.e., goods not having been commingled, altered, or manufactured into a finished product);
- (f) a seller may reclaim goods only to the extent that the goods were in the possession of the debtor at the time the reclamation demand was dispatched; and
- (g) a seller has no right to reclaim goods that have been transferred to a "buyer in the ordinary course" or a "good faith purchaser."

33. Any vendor asserting a claim for reclamation is required to demonstrate that it has satisfied all requirements entitling it to a right of reclamation under applicable state law and section 546(c)(1) of the Bankruptcy Code. See Gale & Lord Inc. v. Arley Corp. (In re



Arlco), 239 B.R. 261, 266 (Bankr. S.D.N.Y. 1999) ("[t]he reclaiming seller has the burden of establishing each element of 546(c) by a preponderance of the evidence."); see also In re Victory Mkts. Inc., 212 B.R. 738, 741 (Bankr. N.D.N.Y. 1997) ("[i]t is [the seller's] burden to establish [the debtor's insolvency], along with every other element of Code § 546(c), by a preponderance of the evidence.").

34. Section 546(c) also provides a debtor with the right to continue to use goods subject to valid reclamation claims in the ordinary course of business, if the reclaiming seller is granted an administrative claim under section 503(b) of the Bankruptcy Code for the value of such goods or a lien to secure such claim. See 11 U.S.C. §§ 503(b), 546(c)(2)(A); In re Roberts Hardware Co., 103 B.R. 396 , 399(Bankr. N.D.N.Y. 1988) (granting administrative expense claim in lieu of reclamation). Conversely, if the debtor determines that the goods at issue are not necessary to the estate, section 546(c) of the Bankruptcy Code authorizes the debtor to seek to return the goods to the vendor. 11 U.S.C. § 546(c).

35. In addition, pursuant to Bankruptcy Rule 9019(b), after notice and a hearing, the court may authorize the Debtors as debtors-in-possession to compromise or settle controversies within a class of controversies without further hearing or notice.

36. The Debtors believe that the relief requested herein will ensure the continuous supply of Goods that are vital to the Debtors' ongoing operations and integral to their successful reorganization. See Eagle Indus. Truck Mfg. Inc. v. Continental Airlines (In re Continental Airlines, Inc.), 125 B.R. 415, 417-18 (Bankr. D. Del. 1991) (denying reclamation of equipment and granting administrative expense claim to creditor where equipment was necessary to debtor's reorganization). Reclamation procedures similar to those requested herein are routinely granted by bankruptcy courts in large chapter 11 cases in order to streamline the

process of resolving reclamation claims and reduce the expense of the administration of the estate. See, e.g., In re Winn-Dixie Stores, Inc., Case No. 05-11063 (RDD) (Bankr. S.D.N.Y. Feb. 23, 2005); In re Ultimate Elecs., Inc., Case No. 05-10104 (PJW) (Bankr. D. Del. 2005); In re Fleming Cos., Case No. 03-10945 (Bankr. D. Del. April 22, 2003); In re Eagle Food Ctrs, Inc., Case No. 03-15299 (Bankr. N.D. Ill. April 7, 2003); In re Genuity Inc., Case No. 02-43558 (Bankr. S.D.N.Y. Dec. 2, 2002); In re Kmart Corp., Case No. 02-02474 (SPS) (Bankr. N.D. Ill. Jan. 25, 2002 and Feb. 22, 2002).

37. Absent the relief requested in this Motion, the Debtors would be required to expend substantial time and resources either to (i) convince the Sellers of the Debtors' authority to make certain payments or (ii) establish their right to retain the Goods. The attendant disruption to the continuous flow of Goods to the Debtors would likely result in a shortage of Goods necessary to maintain certain of the Debtors' manufacturing operations. Given Debtors' use of "just in time" inventory systems, without these Goods such manufacturing facilities may be forced to shut down, which would in turn cause the potential shut down of the facilities of the Debtors' large original equipment manufacturer customers, thereby risking large damage claims and jeopardizing the Debtors' opportunity to achieve a successful reorganization. See In re Griffin Retreading Co., 795 F.2d 676, 679-80 (8th Cir. 1986) (affirming grant of administrative claims because such claims provide flexibility to the bankrupt estate by permitting use of property necessary for a successful reorganization and protecting the Seller without placing the plan in jeopardy).

38. The Debtors submit that implementing the Reclamation Procedures is a sound exercise of their business judgment and is necessary and appropriate to carry out the provisions of section 546(c). The Debtors believe that their ability to reconcile the Reclamation

Claims in this uniform manner will assist in the consensual resolution of such demands and, ultimately, the maximization of value for the Debtors' estates and creditors.

39. Furthermore, the Debtors would avoid unnecessary litigation costs which would arise in connection with non-consensual resolutions of the Reclamation Claims. If the Reclamation Procedures are not approved and implemented, it can be expected that creditors will file adversary proceedings against the Debtors, thereby increasing the Debtors' costs to defend piecemeal litigation. The Reclamation Procedures will effectively and efficiently streamline the process of resolving these claims for the Debtors and the holders of the Reclamation Claims. It is therefore in the best interests of the Debtors, and their respective estates, and creditors, to implement the Reclamation Procedures.

#### Notice

40. Notice of this Motion has been provided by facsimile, electronic transmission, overnight delivery, or hand delivery to (i) the Office of the United States Trustee, (ii) the Debtors' 50 largest unsecured creditors, (iii) counsel for the agent under the Debtors' prepetition credit facility, and (iv) counsel for the agent under the Debtors' proposed postpetition credit facility. In light of the nature of the relief requested, the Debtors submit that no other or further notice is necessary.

#### Memorandum Of Law

41. Because the legal points and authorities upon which this Motion relies are incorporated herein, the Debtors respectfully request that the requirement of the service and filing of a separate memorandum of law under Local Rule 9013-1(b) be deemed satisfied.

WHEREFORE the Debtors respectfully request that this Court enter an order (i) providing administrative treatment for certain holders of valid reclamation claims, (ii) establishing procedures for the resolution and payment of reclamation claims, and (iii) granting the Debtors such other and further relief as is just.

Dated: New York, New York  
October 8, 2005

SKADDEN, ARPS, SLATE, MEAGHER  
& FLOM LLP

By: s/ John Wm. Butler, Jr.  
John Wm. Butler, Jr. (pro hac vice motion pending)  
John K. Lyons  
Ron E. Meisler  
333 West Wacker Drive, Suite 2100  
Chicago, Illinois 60606  
(312) 407-0700

- and -

By: s/ Kayalyn A. Marafioti  
Kayalyn A. Marafioti (KM 9632)  
Thomas J. Matz (TM 5986)  
Four Times Square  
New York, New York 10036  
(212) 735-3000

Attorneys for Delphi Corporation, et al.,  
Debtors and Debtors-in-Possession

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

----- x  
:  
In re :  
: Chapter 11  
DELPHI CORPORATION, et al., :  
: Case No. 05 – \_\_\_\_ (\_\_\_\_)  
Debtors. :  
: (Jointly Administered)  
:  
----- x

ORDER UNDER 11 U.S.C. §§ 362, 503, AND 546 AND FED. R. BANKR. P. 9019  
ESTABLISHING PROCEDURES FOR THE TREATMENT OF RECLAMATION CLAIMS

("RECLAMATION ORDER")

Upon the motion, dated October 8, 2005 (the "Motion"),<sup>1</sup> of Delphi Corporation ("Delphi") and certain of its domestic subsidiaries and affiliates (the "Affiliate Debtors"), debtors and debtors-in-possession in the above-captioned cases (collectively, the "Debtors"), for an order under sections 362, 503, and 546 of the Bankruptcy Code authorizing the Debtors to establish procedures for the resolution and payment of reclamation claims; and upon the Affidavit Of Robert J. Miller, Jr. In Support Of Chapter 11 Petitions And First Day Orders, sworn to October 8, 2005; and upon the record of the hearing held on the Motion; and the Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties-in-interest; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and after due deliberation thereon; and good and sufficient cause appearing therefor it is hereby

<sup>1</sup> Unless otherwise defined herein, all capitalized terms shall have the meaning ascribed to them in the Motion.

ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is GRANTED.

2. The Debtors be and hereby are authorized, pursuant to sections 362, 503, and 546 of the Bankruptcy Code, to resolve Reclamation Claims in accordance with the Reclamation Procedures set forth below:

(a) Reclamation Demands:

- (i) All Sellers seeking to reclaim Goods from the Debtors shall be required to submit a written demand (a "Reclamation Demand"):
  - (1) before 10 days after receipt of such Goods by the Debtors; or
  - (2) if such 10-day period expires after the Petition Date, before 20 days after receipt of such Goods by the Debtors.
- (ii) Such a Reclamation Demand must identify with specificity the goods for which reclamation is sought and the basis for the Reclamation Claim.
- (iii) Any Seller who fails to timely submit a Reclamation Demand pursuant to section 546 of the Bankruptcy Code shall be deemed to have waived its right to payment on any purported Reclamation Claim.

(b) The Statement Of Reclamation:

- (i) Within 90 days after the Petition Date or receipt of a timely Reclamation Demand, whichever is later, the Debtors shall provide the Seller with a copy of the Reclamation Order and a statement of reclamation (the "Statement Of Reclamation" or the "Statement").
- (ii) The Statement Of Reclamation shall set forth the extent and basis, if any, upon which the Debtors believe the underlying Reclamation Claim is not legally valid (the "Reconciled Reclamation Claim"). In addition, the Statement shall identify any defenses that the Debtors choose to reserve, notwithstanding any payment of the Reconciled Reclamation Claim (the "Reserved Defenses").

- (iii) Sellers who are in agreement with the Reconciled Reclamation Claim as contained in the Statement Of Reclamation may indicate such assent on the Statement Of Reclamation and return the Statement to the Debtors' representative as set forth in such Statement, with copies to Skadden, Arps, Slate, Meager & Flom LLP, 333 West Wacker Drive, Suite 2100, Chicago, Illinois 60606 (Att'n: John K. Lyons, Esq. and Allison Verderber Herriott, Esq.) within 60 days after the date of receipt of the Statement Of Reclamation (the "Reconciliation Deadline").
- (iv) Sellers who are in disagreement with the Reconciled Reclamation Claim as contained in the Statement Of Reclamation (the "Dissenting Sellers") must indicate such dissent on the Statement Of Reclamation and return the Statement by the Reconciliation Deadline as provided in subparagraph (c) above. A Statement Of Reclamation returned under this subparagraph must be accompanied by:
  - (1) a copy of the Reclamation Demand together with any evidence of the date such Reclamation Demand was sent and received;
  - (2) the identity of the Debtor that ordered the products and the identity of the Seller from whom the Goods were ordered;
  - (3) any evidence demonstrating when the Goods were shipped and received;
  - (4) copies of the respective Debtor's and Seller's purchase orders, invoices, and proofs of delivery together with a description of the Goods shipped; and
  - (5) a statement identifying which information on the Debtors' Statement Of Reclamation is incorrect, specifying the correct information and stating any legal basis for the objection.
- (v) The failure of a Dissenting Seller to materially comply with subparagraph (d) above shall constitute a waiver of such Dissenting Seller's right to object to the proposed treatment and allowed amount of such Reclamation Claim unless the Court orders otherwise.

- (vi) Any Seller who fails to return the Statement Of Reclamation by the Reconciliation Deadline or who returns the Statement Of Reclamation by the Reconciliation Deadline but fails to indicate assent or dissent shall be deemed to have assented to the Reconciled Reclamation Claim.

(c) Fixing The Amount Of The Reclamation Claim:

- (i) The Reclamation Claims of (i) all Sellers who return the Statement Of Reclamation by the Reconciliation Deadline and indicate their assent to the Reconciled Reclamation Claim as contained in the Statement Of Reclamation, (ii) all Sellers who fail to return the Statement Of Reclamation by the Reconciliation Deadline, and (iii) all Sellers who return the Statement Of Reclamation by the Reconciliation Deadline but who fail to indicate either assent or dissent shall be deemed an Allowed Reclamation Claim in the amount of the Reconciled Reclamation Claim.
- (ii) The Debtors are authorized to negotiate with all Dissenting Sellers and to adjust the Reconciled Reclamation Claim either upward or downward to reach an agreement regarding the Dissenting Seller's Reclamation Claim. The Debtors are also authorized to include any Reserved Defenses as part of any such agreement. In the event the Debtors and a Dissenting Seller are able to settle on the amount and/or treatment of the Dissenting Seller's Reclamation Claim, the Reclamation Claim shall be deemed an Allowed Reclamation Claim in the settled amount.
- (iii) In the event that no consensual resolution of the Dissenting Seller's Reclamation Demand is reached within 60 days of the Reconciliation Deadline (or such later date as the parties agree), the Debtors shall file a motion for determination of the Dissenting Seller's Reclamation Claim and set such motion for hearing at the next regularly scheduled omnibus hearing occurring more than 20 days after the filing of the motion for determination, unless another hearing date is agreed to by the parties or ordered by the Court (the "Determination Hearing"). The Dissenting Seller's Reclamation Claim, if any, shall be deemed an Allowed Reclamation Claim as fixed by the Court



in the Determination Hearing or as agreed to by the Debtors and the Dissenting Seller prior to a determination by the Court in the Determination Hearing.

(d) Treatment Of Allowed Reclamation Claims:

- (i) The Debtors may at any point in these Reclamation Procedures satisfy in full any Reclamation Claim or Allowed Reclamation Claim by making the Goods at issue available for pick-up by the Seller or Dissenting Seller.
- (ii) All Allowed Reclamation Claims for which the Debtors choose not to make the Goods available for pick-up shall be paid in full as an administrative expense pursuant to a confirmed plan of reorganization, or earlier, in whole or in part, in the Debtors' sole discretion.

3. All adversary proceedings, except those proceedings brought by the Debtors in accordance with these procedures (the "Reclamation Procedures"), in these cases relating to Reclamation Claims, whether currently pending or initiated in the future, shall be, and hereby are, stayed, and the claims asserted therein shall be subject to the Reclamation Procedures set forth herein.

4. In accordance with the foregoing and pursuant to section 503(b) of the Bankruptcy Code, vendors shall have administrative expense priority status for those undisputed obligations arising from shipments of goods received and accepted by the Debtors on or after the Petition Date.

5. To the extent necessary or appropriate, the Debtors shall seek Court approval of any settlements and compromises with trade vendors with respect to payments of reclamation claims.

6. Nothing in this Order shall constitute a waiver of any of the Debtors' claims against any vendor, including claims relating to preferential or fraudulent transfers and other

potential claims, counterclaims, or offsets. The Debtors expressly reserve their rights to pursue such claims.

7. The Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.

8. The requirement under Local Rule 9013-1(b) for the service and filing of a separate memorandum of law is deemed satisfied by the Motion.

Dated: New York, New York  
October \_\_, 2005

---

UNITED STATES BANKRUPTCY JUDGE

## **EXHIBIT C**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
:  
In re :  
:  
Chapter 11  
DELPHI CORPORATION, et al., :  
:  
Case No. 05-44481 (RDD)  
Debtors. :  
:  
(Jointly Administered)  
:  
-----X

ORDER UNDER 11 U.S.C. §§ 362, 503, AND 546 AND FED. R. BANKR. P. 9019  
ESTABLISHING PROCEDURES FOR THE TREATMENT OF RECLAMATION CLAIMS

("RECLAMATION ORDER")

Upon the motion, dated October 8, 2005 (the "Motion"),<sup>1</sup> of Delphi Corporation ("Delphi") and certain of its domestic subsidiaries and affiliates (the "Affiliate Debtors"), debtors and debtors-in-possession in the above-captioned cases (collectively, the "Debtors"), for an order under sections 362, 503, and 546 of the Bankruptcy Code authorizing the Debtors to establish procedures for the resolution and payment of reclamation claims; and upon the Affidavit Of Robert J. Miller, Jr. In Support Of Chapter 11 Petitions And First Day Orders, sworn to October 8, 2005; and upon the record of the hearing held on the Motion; and the Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties-in-interest; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and after due deliberation thereon; and good and sufficient cause appearing therefor, it is hereby

<sup>1</sup> Unless otherwise defined herein, all capitalized terms shall have the meaning ascribed to them in the Motion.

ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is GRANTED as provided herein.

2. The Debtors be and hereby are authorized, pursuant to sections 362, 503, and 546 of the Bankruptcy Code, to resolve Reclamation Claims in accordance with the Reclamation Procedures set forth below:

(a) Reclamation Demands:

- (i) All Sellers seeking to reclaim Goods from the Debtors shall be required to submit a written demand (a "Reclamation Demand"):
  - (1) before 10 days after receipt of such Goods by the Debtors; or
  - (2) if such 10-day period expires after the Petition Date, before 20 days after receipt of such Goods by the Debtors.
- (ii) Such a Reclamation Demand must identify with specificity the goods for which reclamation is sought and the basis for the Reclamation Claim.
- (iii) Any Seller who fails to timely submit a Reclamation Demand pursuant to section 546 of the Bankruptcy Code shall be deemed to have waived its right to payment on any purported Reclamation Claim.

(b) The Statement Of Reclamation:

- (i) Within 90 days after the Petition Date or receipt of a timely Reclamation Demand, whichever is later, the Debtors shall provide the Seller with a copy of the Reclamation Order and a statement of reclamation (the "Statement Of Reclamation" or the "Statement").
- (ii) The Statement Of Reclamation shall set forth the extent and basis, if any, upon which the Debtors believe the underlying Reclamation Claim is not legally valid (the "Reconciled Reclamation Claim"). In addition, the Statement shall identify any defenses that the Debtors choose to reserve, notwithstanding any payment of the Reconciled Reclamation Claim (the "Reserved Defenses").

(iii) Sellers who are in agreement with the Reconciled Reclamation Claim as contained in the Statement Of Reclamation may indicate such assent on the Statement Of Reclamation and return the Statement to the Debtors' representative as set forth in such Statement, with copies to Skadden, Arps, Slate, Meager & Flom LLP, 333 West Wacker Drive, Suite 2100, Chicago, Illinois 60606 (Att'n: John K. Lyons, Esq. and Allison Verderber Herriott, Esq.) within 60 days after the date of receipt of the Statement Of Reclamation (the "Reconciliation Deadline").

(iv) Sellers who are in disagreement with the Reconciled Reclamation Claim as contained in the Statement Of Reclamation (the "Dissenting Sellers") must indicate such dissent on the Statement Of Reclamation and return the Statement by the Reconciliation Deadline as provided in subparagraph (c) above. A Statement Of Reclamation returned under this subparagraph must be accompanied by:

- (1) a copy of the Reclamation Demand together with any evidence of the date such Reclamation Demand was sent and received;
- (2) the identity of the Debtor that ordered the products and the identity of the Seller from whom the Goods were ordered;
- (3) any evidence demonstrating when the Goods were shipped and received;
- (4) copies of the respective Debtor's and Seller's purchase orders, invoices, and proofs of delivery together with a description of the Goods shipped; and
- (5) a statement identifying which information on the Debtors' Statement Of Reclamation is incorrect, specifying the correct information and stating any legal basis for the objection.

(v) The failure of a Dissenting Seller to materially comply with subparagraph (d) above shall constitute a waiver of such Dissenting Seller's right to object to the proposed treatment and allowed amount of such Reclamation Claim unless the Court orders otherwise.

- (vi) Any Seller who fails to return the Statement Of Reclamation by the Reconciliation Deadline or who returns the Statement Of Reclamation by the Reconciliation Deadline but fails to indicate assent or dissent shall be deemed to have assented to the Reconciled Reclamation Claim.

(c) Fixing The Amount Of The Reclamation Claim:

- (i) The Reclamation Claims of (i) all Sellers who return the Statement Of Reclamation by the Reconciliation Deadline and indicate their assent to the Reconciled Reclamation Claim as contained in the Statement Of Reclamation, (ii) all Sellers who fail to return the Statement Of Reclamation by the Reconciliation Deadline, and (iii) all Sellers who return the Statement Of Reclamation by the Reconciliation Deadline but who fail to indicate either assent or dissent shall be deemed an Allowed Reclamation Claim in the amount of the Reconciled Reclamation Claim.
- (ii) The Debtors are authorized to negotiate with all Dissenting Sellers and to adjust the Reconciled Reclamation Claim either upward or downward to reach an agreement regarding the Dissenting Seller's Reclamation Claim. The Debtors are also authorized to include any Reserved Defenses as part of any such agreement. In the event the Debtors and a Dissenting Seller are able to settle on the amount and/or treatment of the Dissenting Seller's Reclamation Claim, the Reclamation Claim shall be deemed an Allowed Reclamation Claim in the settled amount.
- (iii) In the event that no consensual resolution of the Dissenting Seller's Reclamation Demand is reached within 60 days of the Reconciliation Deadline (or such later date as the parties agree), the Debtors shall file a motion for determination of the Dissenting Seller's Reclamation Claim and set such motion for hearing at the next regularly-scheduled omnibus hearing occurring more than 20 days after the filing of the motion for determination, unless another hearing date is agreed to by the parties or ordered by the Court (the "Determination Hearing"). The Dissenting Seller's Reclamation Claim, if any, shall be deemed an Allowed Reclamation Claim as fixed by the Court

in the Determination Hearing or as agreed to by the Debtors and the Dissenting Seller prior to a determination by the Court in the Determination Hearing.

(d) Treatment Of Allowed Reclamation Claims:

- (i) The Debtors may at any point in these Reclamation Procedures satisfy in full any Reclamation Claim or Allowed Reclamation Claim by making the Goods at issue available for pick-up by the Seller or Dissenting Seller.
- (ii) All Allowed Reclamation Claims for which the Debtors choose not to make the Goods available for pick-up shall be paid in full as an administrative expense at any time during these chapter 11 cases in the sole discretion of the Debtors or pursuant to a confirmed plan of reorganization, in either case if and to the extent that such allowed reclamation claims constitute administrative expenses under applicable law.

3. All adversary proceedings, except those proceedings brought by the Debtors in accordance with these procedures (the "Reclamation Procedures"), in these cases relating to Reclamation Claims, whether currently pending or initiated in the future, shall be, and hereby are, stayed, and the claims asserted therein shall be subject to the Reclamation Procedures set forth herein.

4. In accordance with the foregoing and pursuant to section 503(b) of the Bankruptcy Code, vendors shall have administrative expense priority status for those undisputed obligations arising from shipments of goods received and accepted by the Debtors on or after the Petition Date.

5. To the extent necessary or appropriate, the Debtors shall seek Court approval of any settlements and compromises with trade vendors with respect to payments of reclamation claims.



6. Nothing in this Order shall constitute a waiver of any of the Debtors' claims against any vendor, including claims relating to preferential or fraudulent transfers and other potential claims, counterclaims, or offsets. The Debtors expressly reserve their rights to pursue such claims.

7. Nothing herein shall constitute a waiver by the agent under the Debtors' prepetition credit facility of its right to contest the allowance of any reclamation claim.

8. The entry of this Order is final; provided, however, that (a) within ten business days after the official committee of unsecured creditors (the "Creditors' Committee") has been formed and retained counsel, the Creditors' Committee or any holder of an alleged reclamation claim may object to the procedures set forth in this Order, (b) if any such objection is timely made, it shall be heard at the next regularly-scheduled omnibus hearing in these cases, and (c) pending such hearing, this Order shall remain in full force and effect.

9. Nothing herein shall preclude the holder of an Allowed Reclamation Claim from seeking payment of such claim in a manner other than that set forth in this Order.

10. The Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.

11. The requirement under Local Rule 9013-1(b) for the service and filing of a separate memorandum of law is deemed satisfied by the Motion.

Dated: New York, New York  
October 13, 2005

/s/ ROBERT D. DRAIN  
UNITED STATES BANKRUPTCY JUDGE